

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,)	
)	
Plaintiff,)	No. CR-15-1723-TUC-RCC-DTF
)	
vs.)	Tucson, Arizona
)	April 12, 2018
Lonnie Ray Swartz,)	4:11 p.m.
)	
Defendant.)	
)	

BEFORE: THE HONORABLE RANER C. COLLINS, JUDGE

REPORTER'S EXCERPTED TRANSCRIPT OF PROCEEDINGS

JURY TRIAL
DAY 15

(TESTIMONY OF PHILIP TROMPETTER)

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CR-15-1723-TUC-RCC - April 12, 2018

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I N D E X

<u>GOVERNMENT WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
PHILIP TROMPETTER				
By Ms. Feldmeier	4			
By Mr. Chapman		19		
By Ms. Feldmeier			31	
By the jury		36		
Discussion Held at Sidebar		20, 35		

~~Philip Trompetter - Direct Examination~~

1 (The following excerpt is the testimony of Philip
2 Trompetter.)

3 THE COURT: This next witness is being called by the
4 Government. We're trying to get this witness on and off today.

5 THE CLERK: Raise your right hand please. 16:11:34

6 (PHILIP TROMPETTER, GOVERNMENT WITNESS, SWORN.)

7 THE CLERK: Thank you. Please be seated.

8 Please pull the microphone over to you, speak direct
9 into it.

10 State your name for the record and spell your last 16:11:49
11 name.

12 THE WITNESS: It's Philip with one L, S. Trompetter,
13 T-R-O-M-P-E-T-T-E-R.

14 DIRECT EXAMINATION

15 BY MS. FELDMEIER: 16:12:00

16 Q. What is your occupation?

17 A. I'm a clinical psychologist that specializes in police and
18 forensic psychology.

19 Q. And could you give the jury a thumbnail sketch of your
20 background? 16:12:10

21 A. Education?

22 Q. Start with education.

23 A. I have a bachelor's degree in psychology from Penn State
24 University, I have master's and a Ph.D. in clinical psychology
25 from the University of Tennessee. 16:12:23

~~Philip Trompetter - Direct Examination~~

1 I first became licensed as a psychologist in 1972, and
2 since that time, since the late 1970s, I've specialized in
3 working with law enforcement agencies and with the courts.

4 Q. All right. And are you board certified?

5 A. I am. 16:12:42

6 Q. Could you explain that to the jury?

7 A. Board certification in psychology is similar to what it is
8 in medicine, at least in California. I would assume in Arizona
9 as well. If you're a physician or if you're a psychologist, if
10 you're licensed, you could practice any specialty in medicine 16:12:57
11 or psychology. We, as patients or clients, have no idea
12 whether or not a person is competent in the specialty. To be
13 board certified is to go in front of a group of board certified
14 specialists, to present written work, be orally examined, and
15 then if you pass muster, then you are considered board 16:13:18
16 certified.

17 So I'm one of 73 board certified police psychologists.

18 Q. In the United States?

19 A. Yes.

20 Q. And have -- that particular board also has certain public 16:13:28
21 offices that are held, and I believe you've held some of those;
22 right?

23 A. I have.

24 Q. And are you actually the past president? You've been the
25 president for the last year? 16:13:42

~~Philip Trompetter - Direct Examination~~

1 A. I was.

2 Q. Okay. You've been a presenter in the area of police
3 psychology; is that true?

4 A. Yes.

5 Q. You do continuing education in that area?

16:13:51

6 A. I do.

7 Q. You're also involved in peer review. What is peer? I saw
8 a lot of that on your resume.

9 A. About ten years ago a group of eight senior police
10 psychologists decided that we wanted to start reviewing each
11 other's work, not necessarily to present our best work, but
12 some of the work that we've done where there may have been a
13 bad outcome, and to present all of the data to our colleagues
14 and get feedback about whether or not there was anything we may
15 have done wrong.

16:14:03

16:14:21

16 So we do this twice a year. And we have our next
17 meeting coming up actually in three weeks.

18 Q. And you've also published?

19 A. I have.

20 Q. Over a dozen articles?

16:14:30

21 A. I'm sorry?

22 Q. Are you a prolific publisher?

23 A. I've probably published 12 or 14 articles.

24 Q. Okay. That's sounds prolific to me.

25 And are you paid for your work here for the

16:14:42

~~Philip Trompetter - Direct Examination~~

1 Government?

2 A. I am.

3 Q. And could you give us a ballpark figure on what you've been
4 paid and what you're going to be paid for today's testimony?

5 A. Up through Tuesday I've billed \$8,606.25. I've been paid 16:14:51
6 for some of that. I just haven't yet been paid -- or haven't
7 billed for the time involved in coming to Tucson and
8 testifying.

9 Q. And that's usually like a flat fee to come in and testify?

10 A. If it's less than a day, I charge by the hour. If I get to 16:15:09
11 a full day, then I have an -- I have a day rate.

12 Q. And what is that day rate?

13 A. My day rate is \$3,000.

14 Q. Okay. Now, what do you do in your current practice?

15 A. In my current practice I perform a lot of forensic 16:15:26
16 evaluations of criminal defendants on various legal issues, the
17 most common is whether they're competent to stand trial. But
18 what's most relevant, I think, for this trial is my work in
19 police psychology. I talk to officers after shootings. I
20 conduct evaluations of officers where there's some question as 16:15:46
21 to whether they continue to be psychologically suitable to work
22 as a cop. I do training of officers in various things that
23 psychologists have some expertise in.

24 And I've been involved in the last five years in
25 testifying as an expert in these kinds of cases, 16:16:04

~~Philip Trompetter - Direct Examination~~

1 officer-involved shooting cases, that either turn into a
2 criminal case or a civil case.

3 Q. And up until today have you always testified on behalf of
4 the officer?

5 A. I've always testified -- I've always been hired and called 16:16:18
6 by the defense up until this case.

7 Q. Okay. You said that you interview officers after a
8 shooting. Is that several weeks after the shooting? Explain
9 to me -- or to the jury how you come in contact with officers
10 who have been involved in a shooting. 16:16:37

11 A. In the early 1980s a concept called critical incident
12 stress debriefings came about, it was mostly with paramedics,
13 and it quickly spread into other first responders, law
14 enforcement and fire. And it's because we found that so many
15 of these first responders were stressing out after these major 16:16:56
16 incidents and developed alcohol problems or stress problems.

17 So this technique seemed to be very useful in allowing
18 these first responders to bounce back after these incidents.

19 So my -- my style has always been -- I usually get a
20 call from a street sergeant after there's been an 16:17:16
21 officer-involved shooting. I always go to the scene.
22 Sometimes the officers are still there. I want to see the
23 scene.

24 Q. Why?

25 A. I want to see the scene, because when I go back to the 16:17:26

~~Philip Trompetter - Direct Examination~~

1 department and have a conversation with the officer, if I don't
2 know what actually happened out there, or if I don't know what
3 the scene actually looked like, then if the officer is talking
4 to me about what they perceived, and there's inaccuracies, I
5 have no way of knowing that unless I have been out there before 16:17:46
6 and seen it, and gotten briefed usually on the investigators
7 that are on the scene already.

8 So I always made it a practice of doing an immediate
9 debriefing and going to the scene.

10 Q. And then you would meet then with the actual officer who 16:17:59
11 was involved in the shooting in a patient/client setting; is
12 that right?

13 A. Yes.

14 Q. Okay. And about how many times have you done this since
15 the '80s? 16:18:11

16 A. You know, I always have to estimate that, because I never
17 keep -- kept a count. But in my area in Northern California we
18 would generally have maybe six to ten officer-involved
19 shootings a year. You're usually debriefing or talking with
20 more than one officer in these incidents. So I've estimated 16:18:27
21 before somewhere between 350 and 500 officers I've debriefed.

22 Q. Okay. And in this particular case did we send you some
23 materials that you relied on?

24 A. Yes.

25 Q. And do you have that in front of you? That might be 16:18:43

Philip Trompetter - Direct Examination

1 quicker than me trying to read it.

2 A. I do.

3 Q. Generally speaking, did we provide you with the Grand Jury
4 transcripts of the scene witnesses?

5 A. Yes.

16:18:54

6 Q. What else?

7 A. You provided me with a video from the east camera, I think
8 it's called, and the west camera of the -- just before, during
9 the incident, and after the incident. I saw animations, I
10 think it's called the Tavernetti exhibits.

16:19:11

11 Q. And with those ones, you saw a select few, you saw the all
12 movement, which is where the little place markers -- the
13 various colored place markers are. You saw the fly around
14 where you -- to get a view of the scene, where the evidence
15 markers was, Mr. Swartz's gun, a video of a walk up to the
16 fence line itself so you could see that. The hand-held
17 recording, I mean. And the perspective from below from where
18 the victim was lying.

16:19:32

19 A. Yes.

20 Q. Okay.

16:19:46

21 A. I saw crime scene photos.

22 Q. Yes.

23 A. I think they were called Pierce photos and another one was
24 a thumb drive. It looks like some were taken in Mexico, some
25 were taken on the American side. Some of them included autopsy

16:19:59

~~Philip Trompetter - Direct Examination~~

1 photos.

2 Q. And then did we send you the synced-up video, the
3 side-by-side so you could see both of the cameras together --

4 A. Yes.

5 Q. -- as opposed to separately?

16:20:11

6 Subsequently yesterday did we go ahead
7 and -- yesterday or the day before, go ahead and send you the
8 trial testimony of the defendant in this case, Lonnie Swartz?

9 A. Yes.

10 Q. And did we also send you the testimony of a Dr. Laurence
11 Miller?

16:20:20

12 A. Yes.

13 Q. You've had a chance to review those?

14 A. Yes.

15 Q. Okay. I would like to go ahead and just run through a
16 couple of concepts from that and ask for your comments on it.

16:20:28

17 Dr. Miller talked about something called threat
18 magnification. Based on your research and your experience, can
19 you talk to us a little bit about threat magnification and
20 whether that is a common term?

16:20:50

21 A. I was surprised to see the term. I've read just about
22 everything there is in police psychology, and I've been working
23 a lot in officer-involved shootings, and I've never run across
24 that term of threat magnification, so I wasn't sure exactly
25 what Dr. Miller meant by that. I just know that in the police

16:21:05

~~Philip Trompetter - Direct Examination~~

1 psychology literature there is no such concept.

2 Q. Okay. But you do acknowledge that there is sort of a
3 sister concept of the auditory -- or both the tunnel vision and
4 then the auditory exclusions?

5 A. I do. And I just assumed Dr. Miller was trying to make the 16:21:21
6 point that what officers will do in these deadly force
7 confrontations is they'll zoom in on the threat, and maybe
8 that's what he meant by magnification of the threat.

9 But I thought there was an implicit statement that
10 somehow normal threats somehow become larger because they're 16:21:39
11 magnified based on the brain function and the physiology, I
12 thought that was a misleading term.

13 Q. Because that's not anything that you -- you've read
14 literature on, that there's a physiological response?

15 A. There's nothing that magnifies a deadly threat. A deadly 16:21:56
16 threat is like pregnancy, I mean, you're pregnant or you're not
17 pregnant, it's not like a little bit of deadly, or a lot of
18 deadly, deadly is deadly.

19 So there's nothing that I know of in the literature
20 that magnifies that. 16:22:12

21 Q. Okay. Let's talk about the memory gap that both the
22 defendant testified to and Dr. Miller spoke to.

23 As you may recall, the video shows about a five second
24 approach to the fence, defendant at the fence for about five
25 seconds, during which time it produces three shell casings. 16:22:30

~~Philip Trompetter - Direct Examination~~

1 Defendant moves up the fence line for seven to eight seconds,
2 stays attached to the fence for a period of time, where it
3 produces, based on circumstantial evidence, ten shell casings,
4 backs up, reloads, comes back, and three more shell casings are
5 ejected at that time. For a total time period from the first 16:22:48
6 shot being fired out of that gun until the last shot of 34
7 seconds.

8 You may recall the defendant's testimony was, he
9 remembers the first -- he remembers the first two rockers. He
10 remembers perhaps moving. He remembers another threat. And 16:23:04
11 then it's a grey area, and he does not account for why he
12 stopped shooting or what he's shooting at during said grey area
13 or memory gap.

14 Do you have comments on that?

15 MR. CHAPMAN: Objection, vague. 16:23:20

16 THE COURT: Overruled.

17 THE WITNESS: Well, there's no doubt, and I'm sure the
18 jury has heard, that there are a lot of perceptual and memory
19 distortions that happen in officer-involved shootings.

20 Officers frequently cannot remember certain aspects of the 16:23:31
21 incident. And usually the things that they can't remember are
22 the things that were not really central to the threat. They
23 usually were things in the periphery. We're just biologically
24 wired to focus in on the threat. Some people call it tunnel
25 vision. 16:23:52

~~Philip Trompetter - Direct Examination~~

1 So I think that some of what Dr. Miller and Agent
2 Swartz testified to is consistent with the literature.

3 What wasn't consistent though was when officers focus
4 on a threat, that's what they remember. They remember the
5 threat. They don't remember things in the periphery of the
6 threat. 16:24:11

7 So when Agent Swartz was talking about perceiving a
8 threat, the first thrower, he describes somebody that I believe
9 the evidence shows was actually there. When he moved down the
10 fence line and said that he thought he saw a second shooter or 16:24:28
11 a second thrower, but then it went grey. That seemed to me to
12 be very different and inconsistent with my experience and the
13 police psychology literature.

14 Because, if anything, if he's decided that this is a
15 deadly force situation triggering ten rounds, he should 16:24:47
16 remember that. He should have perceived that threat. And he
17 should have been able to say why he stopped on that -- after
18 ten rounds, because he perceived that threat was no longer
19 present.

20 So that I thought was inconsistent with my experience 16:25:02
21 and with what the literature shows. Officers always remember
22 the threat because they have to justify the shooting.

23 Q. So you have never had an officer in all the 300 to 500
24 interviews you've done where they cannot -- they have a blank
25 space about the threat? 16:25:21

~~Philip Trompetter - Direct Examination~~

1 A. I have never once had that happen. If anything, you'll see
2 intensified visual details by some officers. They will tell
3 you in great detail that they believe they saw the hollow point
4 on the barrel of the gun, or they saw a Rolex watch on the
5 person's wrist, or the hair standing up, an incredible amount
6 of detail that they couldn't even believe. 16:25:38

7 So the enhanced details and the very precise memories
8 are about the threat. The things that they don't remember are
9 things that are really not important, how many rounds they
10 fired, whether they reload, those kinds of other things that 16:25:55
11 Agent Swartz said and I thought were consistent with the
12 science.

13 Q. All right. What about the significant fact in this
14 case -- well, significant to me, I don't know if it is to you.
15 But he empties his magazine, the ten rounds, and has not 16:26:08
16 identifying the threat or what he's shooting at -- or tells us
17 today he can't tell us. He backs up, he reloads, he fires
18 again.

19 And again, you're not saying that the -- you're saying
20 the reload, lack of memory of the reload is something that is 16:26:24
21 common, that does happen, right, because it's an automatic
22 movement?

23 A. The mechanical actions that go along with responding to a
24 deadly threat are not remembered because they're not paying
25 attention to it, it's just not vital. 16:26:38

~~Philip Trompetter - Direct Examination~~

1 Q. But what about the idea that once he starts firing again,
2 he's got 12 bullets in that gun, and he chooses to stop at
3 three?

4 A. What was noteworthy to me is that he didn't remember, I
5 think, approaching the fence for the third time, doesn't
6 remember anything about it, couldn't identify a threat. So he
7 can't explain why he felt like he needed to deliver deadly
8 force because of a threat. And that, again, is sort of
9 consistent with what I just said about the second volley of
10 shots.

16:26:53

16:27:09

11 Officers in my experience always remember and can
12 describe the threat. They may be inaccurate about where the
13 person was, or what their position was, or what they were
14 wearing, or whether they had a beard or no beard. But they can
15 tell you what they perceived the threat to be.

16:27:24

16 Q. Okay. Let's talk about what I termed with Dr. Miller and I
17 think he adopted was the idea of a hallucination of a figure in
18 the middle of the street, or wherever it was, that doesn't show
19 up in any of the evidence.

20 Have you ever had in your experience, or read in the
21 literature, that officers in a deadly-threat situation have
22 hallucinations of a threat that's not really there?

16:27:41

23 A. No.

24 Q. Let's talk about the physical reaction of throwing up after
25 the shooting.

16:28:00

~~Philip Trompetter - Direct Examination~~

1 You've explained to us that you've been there right
2 after the shootings. Have you ever seen an officer have a
3 violent physical reaction, to include throwing up, or maybe
4 even just sobbing uncontrollably?

5 A. I've never had an officer throw up on scene. I've had 16:28:13
6 officers later, after things start sinking in, when they find
7 out information about the victim, when they get a chance to
8 really start processing it, develop various kinds of physical
9 problems. But on scene, but -- with one exception.

10 Q. What's that? 16:28:31

11 A. Where I had one officer who was injured after an extended
12 fight with a man that weighed 260 pounds more than her, who was
13 taken in an ambulance ride and became very emotional in that
14 ambulance ride, and feel very -- she couldn't identify why she
15 was upset, but she was very demonstrably upset. 16:28:54

16 With that exception on scene, and within usually
17 minutes after, I've never seen anyone develop that kind of
18 emotionality.

19 Later on when we're in an office and we're talking and
20 I'm asking questions and asking for feelings, then I'll see 16:29:11
21 some emotionality.

22 Q. Okay. Did you find the video in this case to be helpful?

23 A. I thought it was one of the most important things -- pieces
24 of evidence that I had.

25 Q. Why? 16:29:26

Philip Trompetter - Direct Examination

1 A. For the same reason that I thought it important always to
2 go by a crime scene or a shooting scene before I would talk to
3 an officer. I needed to see what actually happened and what
4 the scene looked like before I would go and talk and listen to
5 the officer, so I can determine whether or not the officer's
6 perceptions were distorted, I can find out whether or not the
7 shooting may be a bad shooting, or a justified shooting.
8 Because those things were all important to me in trying to
9 figure out how to assist this officer.

16:29:42

10 I think that, even when I'm not doing that role, but
11 I'm hired by the defense to take a look at a shooting and to
12 provide some expert testimony, if that's possible, if there's
13 videos, body cam videos or dash cam videos, or any kinds of
14 photographic evidence that helps me know exactly what happened
15 out there, then I'm in a better position to be able to judge
16 the credibility of the officer that I'm evaluating or talking
17 to.

16:29:59

16:30:20

18 Q. Was there something else about the length of this
19 particular shooting, I'm using the 34-second first to last
20 shot, that's unusual also in your practice?

16:30:38

21 A. Yes.

22 Q. What is that?

23 A. Most shootings, as probably everybody knows, they happen in
24 split seconds. Usually officers have a third of a second to
25 react to a deadly threat in front of them. And they have to

16:30:50

~~Philip Trompetter - Cross-Examination~~

1 make quick decisions with very little time.

2 This was a situation that extended, in my
3 understanding, over 34 seconds. And while maybe the first
4 volley of three shots could have been viewed as a quick
5 split-second making a decision, from my view of the other 16:31:08
6 evidence it seemed to me that the ten shots and the last three
7 shots were done in more of a methodical way with an officer who
8 had plenty of time to assess whether or not there was actually
9 a threat.

10 MR. CHAPMAN: Objection. 16:31:27

11 THE COURT: Objection will be sustained.

12 MR. CHAPMAN: Beyond his area of expertise.

13 THE COURT: Objection will be sustained.

14 MS. FELDMEIER: May have a moment with counsel?

15 (Discussion off the record between Government counsel.) 16:31:35

16 MS. FELDMEIER: No other questions. Thank you.

17 THE COURT: Mr. Chapman.

18 CROSS-EXAMINATION

19 BY MR. CHAPMAN:

20 Q. Good afternoon, sir. 16:31:52

21 A. Good afternoon.

22 Q. Did you know that I first learned that you were going to be
23 testifying in this case last night?

24 A. I didn't.

25 Q. The Government hadn't disclosed anything about your 16:32:02

~~Philip Trompetter - Cross-Examination~~

1 testimony to me until they gave me your report of an interview
2 that they did with you in November of last year. But I didn't
3 get it until last night. Did you know that?

4 A. I did not.

5 MS. FELDMEIER: Objection, Your Honor. Can we
6 approach at sidebar?

16:32:17

7 (At sidebar on the record.)

8 MS. FELDMEIER: I didn't want to say this in front of
9 the jury, but Mr. Chapman has had notice of Philip Trompetter
10 since we produced our witness list. We did put him on the
11 witness list at the beginning. We said Dr. Trompetter, and we
12 sent him the resume.

16:32:35

13 THE COURT: But you didn't give him the report until
14 yesterday.

15 MS. FELDMEIER: Right. Because he's a rebuttal
16 witness, and that's fair.

16:32:43

17 But he has had notice, he's had plenty of time to
18 research him and to look at his resume.

19 THE COURT: But he's talking about the report.

20 MS. FELDMEIER: Right. But he made it sound like the
21 notice part, like I only first heard about you yesterday. And
22 that's not accurate. He's known about him for over a month.

16:32:51

23 THE COURT: All right.

24 MS. FELDMEIER: So I just wanted to kind of clear that
25 up.

16:33:00

~~Philip Trompetter - Cross-Examination~~

1 MR. CHAPMAN: I'll clear that up.

2 MS. FELDMEIER: Thank you.

3 THE COURT: All right.

4 (End of discussion at sidebar.)

5 BY MR. CHAPMAN:

16:33:10

6 Q. The point is, Mr. Trompetter, that this case has been going
7 on for five years, the trial has been going on for almost four
8 weeks now, and for some reason these prosecutors decided to
9 wait until 4:47 p.m. yesterday to give me a report.

10 MS. FELDMEIER: Objection, Your Honor, this witness
11 has said he does not know when the report -- Mr. Chapman is
12 testifying.

16:33:33

13 THE COURT: Overruled.

14 MR. CHAPMAN: I'm just asking him if he knows.

15 THE COURT: Overruled.

16 BY MR. CHAPMAN:

17 Q. They waited until 4:47 yesterday to summarize what you were
18 going to say, which goes back to an interview that happened in
19 November of last year.

20 Did you know that?

16:33:54

21 A. I did not.

22 Q. So you'll forgive me if I'm a little disjointed in my
23 questions. Okay?

24 A. I forgive you.

25 Q. I did send you some articles about officer-involved

16:34:03

~~Philip Trompetter - Cross-Examination~~

1 shootings -- or I sent them to Miss Feldmeier. Did you have an
2 opportunity to review them?

3 A. I did.

4 Q. All right. And she told me that you were familiar with
5 three of the articles; is that correct?

16:34:24

6 A. I was familiar with the Alpert article, Artwohl article,
7 and the Honeg/Lewinski article. I was not familiar with the
8 one I believe from an M.D.

9 Q. Okay. I'm going to ask you a few questions about those
10 articles in a second. But first I want to ask you this:

16:34:45

11 You indicated you reviewed Dr. Miller's report. Did
12 you go to the crime scene?

13 A. I did not.

14 Q. Are you aware that the Government waited three years to
15 indict this case?

16:35:01

16 MS. FELDMEIER: Objection, relevance with this
17 witness.

18 THE COURT: Sustained.

19 BY MR. CHAPMAN:

20 Q. All right. I'm going to go through some of Dr. Miller's
21 report. Do you have it in front of you?

16:35:11

22 A. I do.

23 Q. Why don't you turn to page 7, and look at the section
24 entitled Sensory and Perceptual Adaptations, first paragraph.

25 Have you read it?

16:35:55

~~Philip Trompetter - Cross-Examination~~

1 A. I have.

2 Q. All right. He writes, the most common phenomenon is a
3 distortion in time perception. Paradoxically this can take two
4 seemingly opposite patterns. Many officers recalled isolated
5 events of a shooting episode as occurring in slow motion.

16:36:11

6 Do you agree with that concept?

7 A. I do.

8 Q. One of the articles that I asked you to review was an
9 article by Alexis Artwohl. Do you recall that?

10 A. I do.

16:36:29

11 Q. And do you know who she is?

12 A. I do.

13 Q. And hang on just a second.

14 Tell the jury who she is.

15 A. Alexis Artwohl, I believe, is a Tusconian, if that's the
16 right term. She's had her police psychologist experience in
17 the Portland Police Bureau in Oregon until she retired and now
18 has done a lot of work on officer-involved shootings, and has
19 published some of the most important work on helping us

16:36:44

20 understand the various perceptual distortions and memory
21 impairments that occur in officer-involved shootings.

16:37:05

22 Q. And the article I asked you to read was in the October 2002
23 issue of the FBI Law Enforcement Bulletin generated by the
24 Department of Justice; is that right?

25 A. Yes.

16:37:24

~~Philip Trompetter - Cross-Examination~~

1 Q. The same entity that employs these two prosecutors right
2 here.

3 I want to refer you to some of the statements that she
4 made in the article and ask if you agree.

5 She points out examples or statistical numbers of 16:37:41
6 different memory issues and perceptual difficulties experienced
7 by officers in officer-involved shootings; is that right?

8 A. Yes.

9 Q. And in the study that she was involved in, which I think
10 involved 157 officers, 62 percent of them reported distortion, 16:38:11
11 sensory distortion in terms of slow motion.

12 Does that sound right to you?

13 A. It does.

14 Q. 84 percent noticed that sounds seemed diminished. True?

15 A. Yes. 16:38:31

16 Q. 79 percent reported tunnel vision. True?

17 A. True.

18 Q. 74 percent said they responded on, quote, auto pilot, close
19 quote, with little or no conscious thought.

20 A. True. 16:38:46

21 Q. Is that true?

22 A. Yes, sir.

23 Q. And what does that mean, going on auto pilot?

24 A. Auto pilot I believe to most of us means that there's
25 several actions that are involved in a deadly force response by 16:38:57

~~Philip Trompetter - Cross-Examination~~

1 a police officer that the officer doesn't have to think about.

2 In the same way that you and I and the jury and the people in

3 this room don't have to think about applying the brakes if we

4 need to stop a car or putting our foot on the accelerator.

5 Those are in our muscle memory. All we have to decide to do is 16:39:16

6 to stop or to go.

7 So I think what she's talking about there is drawing

8 your holster, re-holstering, squeezing the trigger, counting

9 rounds. Those are the kinds of things that officers go on

10 automatic about. Not that they're automatons that don't have 16:39:35

11 the ability or the requirement to think it through as they're

12 doing it.

13 Q. Getting back to Dr. Miller's report, he states on page 7

14 that tunnel vision can occur in as many as 70 percent of the

15 cases of an officer-involved shooting. 16:39:53

16 That's second paragraph of page -- that subsection we

17 were just talking about.

18 I'm sorry, I misread that. He writes: In some cases

19 peripheral vision may be narrowed as much as 70 percent.

20 Do you agree with that? 16:40:12

21 A. I do.

22 Q. Getting back to Art -- Dr. Artwohl's article, she also

23 writes that in this study she found that 46 percent of officers

24 involved experience memory loss of some of their behavior

25 during the event. True? 16:40:36

~~Philip Trompetter - Cross-Examination~~

1 A. True.

2 Q. And it doesn't specify what fragment of the behavior, just
3 some of the behavior; right?

4 A. Her article doesn't specify.

5 Q. Did you say that you also reviewed the human factors
6 article by Mr. Lewinski?

16:40:48

7 A. I knew the article and briefly re-reviewed the Honig
8 Lewinski article that you provided.

9 Q. Now, Lewinski is a professor at the Minnesota State
10 University, and he's recognized as an expert in this field,
11 isn't he?

16:41:19

12 A. Yes.

13 Q. And he published an article in the Law Enforcement
14 Executive Forum in 2008. And that's the one that you reviewed?

15 A. If that's the Honig Lewinski, yes.

16:41:38

16 Q. Yes. He basically says in this article that under high
17 stress the focus and process of the brain shifts from one of
18 thinking to one of reacting. And that the focus of the
19 operation shifts from the new brain and the hippocampus to the
20 amygdala, also known as the old brain.

16:42:31

21 Do you agree with that statement?

22 A. He's -- Audrey Honig and Bill Lewinski are making reference
23 to an Alexis Artwohl article where she's quoting a psychologist
24 by the name of Epstein. And it's Epstein's work that talks
25 about that, how in high stress situations essentially all of

16:42:49

~~Philip Trompetter - Cross-Examination~~

1 these biological functions occur, that I think Dr. Miller
2 testified to very nicely.

3 So I'm no expert in the specifics of the physiology of
4 the brain, but I've no reason to disagree with the statement in
5 that Honig Lewinski article. 16:43:07

6 Q. And you have no issue with Dr. Miller's testimony on the
7 biological facets of how the brain reacts in a high stress
8 situation?

9 A. I have no issue with that.

10 Q. This article also indicates that an officer operating under 16:43:22
11 low light conditions can fail to accurately identify
12 individuals or objects in close proximity, and will be more
13 vulnerable to respond to furtive movements.

14 He also points out that the problem, that use of force
15 training usually occurs during the day, while many 16:44:01
16 officer-involved shootings occur at night or in low light
17 conditions.

18 Do you agree with that?

19 A. I do.

20 Q. And you know that this case involved low light conditions 16:44:12
21 and occurred at night?

22 A. I believe -- I know it occurred at about 11:15 at night.

23 So I don't know how precisely I'm aware of whether the lighting
24 conditions were adequate or not adequate. But I know it wasn't
25 daylight, and I think there was a street lamp. 16:44:29

~~Philip Trompetter - Cross-Examination~~

1 Q. Getting back to Artwohl's article, she drew excerpts at the
2 beginning of perceptual difficulties experienced by individual
3 police officers, and cited them in her article. And I want to
4 read a few of them to you and see if you've encountered similar
5 reports by officers that you've spoken to.

16:44:53

6 The first one she wrote about, the officer told her,
7 the suspect -- I saw the suspect suddenly point his gun at my
8 partner. As I shot him I saw my partner go down in a spray of
9 blood. I ran over to my partner and he was standing there
10 unharmed. The suspect never even got off a shot.

16:45:12

11 Is that consistent with the types of things you've
12 heard from police officers over the course of your career?

13 A. Yes.

14 Q. Here's another one.

15 When I got home after the shooting, my wife told me
16 that I had called her on my cellphone during the pursuit of the
17 violent suspect just prior to the shooting. I have no memory
18 of making that phone call.

16:45:25

19 Is that consistent too?

20 A. Yes.

16:45:40

21 Q. Here's another one.

22 I told the SWAT team that the suspect was firing at me
23 from down a long, dark hallway about 40 feet long. When I went
24 back to the scene the next day, I was shocked to discover that
25 he had actually been only about five feet in front of me in an

16:45:56

~~Philip Trompetter - Cross-Examination~~

1 open room. There was no dark hallway.

2 Is that consistent with the types of things you've
3 been told in the past?

4 A. Yes, that's a very common phenomena.

5 Q. Common -- how could it be common? This individual is
6 saying, I thought the person was 40 feet away and it turned out
7 to be five feet.

16:46:12

8 A. But those are the kinds of distortions that happen in these
9 kinds of situations.

10 Q. It's an indication of how extreme stress can warp and
11 percept -- change your perception; right?

16:46:27

12 A. Yes.

13 Q. And just because he said that, he thought it was 40 feet
14 away, doesn't mean he was lying. It's what he perceived at the
15 time; right?

16:46:49

16 A. I agree.

17 Q. Here's another one: During a violent shootout I looked
18 over, drawn to the sudden mayhem, and was puzzled to see beer
19 cans slowly floating through the air past my face. What was
20 even more puzzling was they had the word "federal" printed on
21 the bottom. They turned out to be shell casings ejected by the
22 officer who was firing next to me.

16:47:05

23 Have you ever heard of anything like that?

24 A. I have.

25 Q. So this guy is so stressed out that he has projected the

16:47:16

~~Philip Trompetter - Cross-Examination~~

1 size of a shell casing that's this big to the size of a beer
2 can, and he's so focused on it that he can see the word
3 "federal" stamped on the back of the shell casing?

4 A. Yes.

5 Q. The truth is is that you believe that there's some things 16:47:33
6 that were unusual about this case, and you've stated them, but
7 you can't get into Swartz's mind. Nobody can. You don't know
8 what he was thinking at the time, do you?

9 A. That's correct.

10 (Discussion off the record between defense counsel.) 16:48:11

11 BY MR. CHAPMAN:

12 Q. Sir, you testified that you -- that you really hadn't
13 experienced the notion of threat -- you testified you really
14 hadn't heard of threat magnification and it wasn't used in this
15 field. And, of course, we just heard that a few minutes ago, 16:48:48
16 we didn't have a chance to respond. But my co-counsel here has
17 done some research.

18 And I'm just going to ask you: Were you aware that
19 on -- in May of 2010 the Journal of Personality wrote an
20 article called Personality and Defensive Reactions; Fear, Trait 16:49:07
21 Anxiety, and Threat Magnification?

22 Were you aware of that?

23 A. I'm not aware of that.

24 My testimony, Mr. Chapman, was that I've never read
25 that term in the police psychology literature. 16:49:18

Philip Trompetter - Redirect Examination

1 Q. And it goes on to talk about threat magnification.

2 The extent of this threat magnification mediated the
3 positive association between fear and orientation away from the
4 threat.

5 You're not aware of this article?

16:49:38

6 A. I'm not.

7 MR. CHAPMAN: I don't have any further questions.

8 THE COURT: Miss Feldmeier, anything further?

9 MS. FELDMEIER: Real quick, Your Honor.

10 THE COURT: The lawyers can do research, you can't.

16:50:04

11 MS. FELDMEIER: And we're abysmal at it.

12 REDIRECT EXAMINATION

13 BY MS. FELDMEIER:

14 Q. So the article that counsel just suggested to you was
15 someone stating we investigated this theory in two separate
16 studies using a threat scenario research strategy. It
17 shows -- it's just a real short little blurb here, so I can't
18 even tell --

16:50:34

19 It looks like the authors of this article are Adam
20 Perkins, Andrew Cooper, Maura Abdelall, Luke Smillie and
21 Philip Corr.

16:50:55

22 Are any of those individuals police psychologists,
23 that you're aware of?

24 A. Not to my knowledge.

25 Q. In fact, police officers are trained, because of the fact

16:51:07

~~Philip Trompetter - Redirect Examination~~

1 that it's known they're going to come into high threat
2 situations, it's part of their job.

3 A. Yes.

4 Q. And so one -- well, I don't want to put you outside the
5 area of your expertise, but what is the purpose of training an
6 officer to encounter these -- you train officers. So what's
7 the purpose of training officers on high threat situations?

16:51:35

8 A. Well, part of the reason that we train officers is to
9 overcome these biological responses. We don't -- none of us
10 should be responding just biologically to what we perceive as a
11 threat. And that's why we train our officers, we give them
12 guidance, we give them rules to go by, rules of engagement,
13 give them various options.

16:51:55

14 MR. CHAPMAN: Objection, Your Honor, this is use of
15 force testimony, it's not appropriate in this witness.

16:52:10

16 THE COURT: Overruled. I'll let him finish his
17 answer.

18 THE WITNESS: So I think -- part of the training of
19 officers, particularly in deadly force confrontations, is to
20 have some -- some protocol, some schema if you will, to go by
21 to help them offset what their biology wants them to do. And
22 we expect them to abide by that.

16:52:23

23 BY MS. FELDMEIER:

24 Q. And that's part of the psychologist in you, is you know
25 that's how the brain works, and so you encourage the training.

16:52:41

Philip Trompetter - Redirect Examination

1 That would be your professional advice as a psychologist;
2 right?

3 A. Sure.

4 Q. Now Mr. Chapman read you a couple of series of examples out
5 of the Artwohl article. 16:52:56

6 Am I correct in understanding that Artwohl's position
7 is that memory loss of officer behavior during the event is not
8 uncommon?

9 A. Well, there's memory loss of lots of things, including
10 memory loss for some of your own behavior. 16:53:13

11 Q. Okay. And his examples of no memory of making a phone
12 call, for example, to your wife, is that the kind of memory
13 loss that you and I were discussing on direct examination we
14 heard from Mr. Swartz?

15 A. Well, I mean, there's probably various explanations for it. 16:53:32
16 But I think the -- I think every explanation would have as a
17 bottom line, the officer wasn't paying that much attention to
18 what he was doing on the phone or the officer would remember
19 that phone call. The officer was obviously distracted or
20 preoccupied with other things, as would be understandable. 16:53:51

21 Q. So is the point of your testimony really the basic fact
22 that we heard from the defendant that he has a memory loss
23 involving the threat itself, and a memory loss of why he
24 stopped shooting at said threat. Is that the issue?

25 A. Well, I'm going to push and I'm going to pull. 16:54:11

Philip Trompetter - Redirect Examination

1 Q. Go ahead.

2 A. I think there's clearly memory impairment for officers in
3 officer-involved shootings for the majority of the officers. I
4 have never once seen a case though where an officer had a
5 memory loss for the threat that they were delivering deadly
6 force toward. 16:54:26

7 Q. Okay. In fact, when we see the bullet casings flying by
8 they look like beer cans, he's focused on things that could
9 hurt him.

10 A. Well, the distinction too, is, you know, there's clearly
11 perceptual distortions. And I know Dr. Miller talked about the
12 distortion. 16:54:40

13 A distortion is different than a hallucination, if I
14 can --

15 Q. Yes. 16:54:52

16 A. A hallucination is where you see or you hear or you feel
17 something that is absolutely not there, it's just not present.

18 A perceptual distortion is where you, say visually, is
19 you see something but you misinterpret what it is. So in this
20 case, just as an example, if Agent Swartz had said, as he was
21 scanning to the west and there was like an electrical box on
22 the corner that he misperceived as a rock thrower, that would
23 be more believable than saying, he doesn't remember -- he can't
24 articulate any threat. That just seemed to me to me to be
25 inconsistent with my experience and with the science. 16:55:06
16:55:28

Philip Trompetter - Redirect Examination

1 MS. FELDMEIER: No other questions, Your Honor.

2 THE COURT: Jurors have any questions, please place
3 them in writing.

4 (At sidebar on the record.)

5 THE COURT: I'm going to give you the instructions 16:55:50
6 that I've worked on so far, let you take them home, take a look
7 at them. And then we can meet Monday morning at 9:00 o'clock
8 and hash out anything we have problems with.

9 MR. CHAPMAN: And start close at --

10 THE COURT: At 10:00. Can we do that? 16:56:10

11 MR. CHAPMAN: Yeah.

12 THE COURT: Okay.

13 MR. CALLE: There is one issue. The issue is, we have
14 all these exhibits, and --

15 THE COURT: You can check with Sherry today. 16:56:18

16 MR. CALLE: I'm talking about, how does the
17 jury -- like the last time we did this, we actually provided a
18 computer for the jury.

19 THE COURT: We may have to do that.

20 MR. CALLE: I have one. 16:56:30

21 THE COURT: Okay. We'll do that.

22 MS. FELDMEIER: Maybe yours will work.

23 THE COURT: Yours will probably work, too.

24 All right. So I'll have the jury come back Monday at
25 10:00. We'll meet at 9:00 o'clock on Monday. 16:56:37

~~Philip Trompetter - Jury Questions~~

1 I'm going to have them give you a packet to take home
2 with you.

3 This is the whole purpose we came over here.

4 If the officers are trained to counter biological
5 reactions in high stress situations, why do officers still have 16:56:50
6 biological reactions to high stress situations?

7 How many officer-involved shootings have you
8 physically been at when they occurred?

9 Do you ask each police officer after the shooting if
10 they had any nausea or vomiting? 16:57:10

11 If you -- if you were to evaluate Agent Swartz of his
12 action on October 10, 2012, what's your evaluation of him?

13 No, not that one.

14 MS. FELDMEIER: Do you think that's a question?

15 Probably not. 16:57:29

16 THE COURT: Did you have a chance to talk to Swartz
17 about the incident?

18 No, I'm not going to ask him that one either.

19 (End of discussion at sidebar.)

20 THE COURT: I have a couple questions from the jury. 16:57:43

21 If the officers are trained to counter biological
22 reactions in high stress situations, why do officers still have
23 biological reactions to high stress situations?

24 THE WITNESS: Well, the training doesn't really stop
25 the biological reactions, it just helps them manage it. So 16:58:02

~~Philip Trompetter - Jury Questions~~

1 that would basically be my response to that.

2 THE COURT: How many officer-involved shootings have
3 you physically been at when they occurred?

4 THE WITNESS: As the shooting occurred?

5 THE COURT: Yes.

16:58:17

6 THE WITNESS: None.

7 THE COURT: Do you ask each police officer after a
8 shooting if they had any nausea or vomiting?

9 THE WITNESS: I ask them if they have any kinds of
10 physical symptoms.

16:58:29

11 THE COURT: Miss Feldmeier?

12 MS. FELDMEIER: Nothing.

13 THE COURT: Mr. Chapman?

14 MR. CHAPMAN: No further questions.

15 THE COURT: Thank you. You may step down.

16:58:36

16 THE WITNESS: Thank you, Your Honor.

17 (Further proceedings held on the record not included in
18 this transcript.)

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CR-15-1723-TUC-RCC - April 12, 2018

C E R T I F I C A T E

I, CANDY L. POTTER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 4th day of June, 2018.

s/Candy L. Potter
Candy L. Potter, RMR, CRR